Court No.3

Criminal Misc. Application No. 176/ 2002

Rakesh Tyagi S/o Jai Prakash Tyagi,
R/o 1/1 Teg Bhadhur Road
P.S. Dalanwala
District Dehradun …… Petitioner.

Vs.

Devendra Singh …….. Respondent.

Hon'ble Irshad Hussain, J.

Aggrieved by an order of taking cognizance against the petitioner-accused for an offence under section 138 of the Negotiable Instrument Act, 1981 (hereinafter referred to as 'the Act') an order dated 6-12-2001 summoning him accordingly in exercise of the powers under section 204 (1) of the Code of Criminal Procedure (hereinafter referred as 'Code') by the Ist A.C.J.M., Haridwar in case No. 2292/2001 and also dismissal of the revision by the Sessions Judge, Haridwar per judgment and order dated 1.5.2002 preferred against the said order of taking cognizance, this petition has been preferred by the petitioner-accused.

(2). Heard Sri Rajendra Singh Advocate for the petitioner and Sri Lokpal Singh learned counsel for the complainant-respondent No.1.

(3). Complainant filed written complaint against the petitioner-accused alleging that the cheque dated 8-8-1996 given to him by the accused to discharge the liability was returned unpaid by the bank because of the amount of money standing to the credit of the accused was insufficient to honour the cheque and the required notice sent to the accused was returned on 15-10-2001 with the endorsement that the accused (addressee) refused to accept the same and therefore the accused has made himself liable to be prosecuted and punished under section 138 of 'the Act'. The complaint was filed on 16-10-2001.

(4). The learned counsel for the petitioner submitted that the complaint was premature because the notice was sent on 27-9-2001 and it was returned to the complainant by the postal department with the endorsement of refusal to receive the same by the accused (addressee) dated 4.10.2001 and the same having been delivered back to the complainant on 15.10.2001 the complaint

could not have been legally filed before expiry of 15 days from the date of the refusal i.e. 4.10.2001 and that the order of taking cognizance by the learned Magistrate on 16.10.2001 when the written complaint was filed was illegal and against the provision of law as contained under section 142(b) of 'the Act'. On the other hand the submission of the learned counsel for the complainant-respondent No.1 was that the complaint was neither premature nor the order of taking cognizance and of summoning the petitioner-accused dated 6.12.2001 is illegal and without jurisdiction.

(5). It is not in dispute that the written complaint was filed on 16-10-2001 and the order of taking cognizance and summoning the petitioner-accused was passed by the learned Magistrate on 6.12.2001 (Annexures 1 and 3 respectively to the petition). The statement under section 200 of 'the Code' of the complainant was recorded and the copy of the same is Annexure-2 to the petition. No date of recording of this statement is available on it. It therefore does not appear that the learned Magistrate applied his mind for the purposes of proceeding under section 200 and the succeeding sections in Chapter XV of 'the Code' on 16-10-2001, the date itself of the filing of the written complaint. Considering this the learned Magistrate applied his mind and took cognizance of the offence on the complaint on the basis of the material on record as well as the statement under section 200 of 'the Code' on 6.12.2001. The perusal of the order (Annexure-3) does not indicate that the statement of the complainant under section 200 of 'the Code' was recorded on an earlier date. The Apex Court in the matter of Narsingh Das Tapadia Vs. Goverdhan Das Partani; 2001 (42) A.C.C. 159 (Supreme Court) laid down that filing of written complaint for an offence under section 138 of 'the Act' is permissible before the date on which the cause of action as referred to under section 142(b) of 'the Act' arises, but the cognizance by the competent Magistrate can only be taken on the expiry of the 15 days period of the notice as contemplated by section 138 of 'the Act'. It also laid down that he Magistrate takes cognizance as contemplated by the provisions of section 190(1) (a) of 'the Act' of the offence alleged in the complaint not on the date of receiving of the same but when the Magistrate applies his mind for the purposes of proceeding under section 200 and the succeeding sections of the Chapter XV of 'the Code'. In the instant case as stated above although the complaint was filed premature on 16-10-2001 but the material

on record reveal that the Magistrate applied his mind and took cognizance of the offence on 6-12-2001 i.e. after 15 days from the date of the notice. Therefore the complaint was legally maintainable and the order passed by the learned Magistrate was perfectly legal and within jurisdiction.

(6). In view of above there is no force in this petition under section 482/483 of 'the Code' and the same is liable to be dismissed.

(7). The petition is dismissed. The stay order dated 19-6-2002 is vacated.

(Irshad Hussain, J.)

Dated: 18-9-2003

ISB